HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 5717 OF 2007

DATED: 30.4.2007

Between:

E.S.I Corporation, rep. By its joint Director, Hyderabad

.. Petitioner

and

Andhra Bank, rep. By its Chief Manager,Sultan Bazar, Koti Hyderabad and another

…Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.5717 OF 2007

ORAL ORDER:

The writ petitioner is the E.S.I Corporation. According to it the 2nd respondent-Company is due an amount of Rs.1,05,552/- + interest to the Corporation under the provisions of the Employees' State Insurance Act, 1948(for short "The Act"). Recovery proceedings are stated to have been initiated against the 2nd respondent for recovery of the dues. While so, the 1st respondent-Bank published an advertisement in English daily-The Hindu on 12-02-2007 intimating auction of the specified properties belonging to the 2nd respondent, and further intimating the last date for submission of tender as 16-03-2007. The petitioner contends that it has a right over the properties put to auction under Sec.45-C and 94 of the Act and Under Sec.94 of the Act there is a priority to the liabilities due to the petitioner-Corporation and therefore the 1st respondent cannot initiate and pursue proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (for short " the 2002 Act").

According to the 1st respondent, the 2nd respondent had committed default in the payment of loan obtained from the 1st respondent and therefore proceedings were initiated under the provisions of the 2002 Act. The mortgaged property was taken possession on 18-01-2006 under a process under Sec.13(4) of

the 2002 Act and the said properties were notified for auction on 14-06-2006 and again on 20-10-2006. There was thereafter a fire accident and the sale could not be completed and hence the property is again put up for auction on 16-03-2007. On 16-03-2007 according to the 1st respondent the bid was knocked down in favour of M/s.Abhinandan Investments (Private) Limited for a total sale consideration of Rs.2.52Crores and the auction was confirmed on the said date. The purchaser paid the entire sale consideration and was put in possession of the property. Section.94 of the Act reads as under:

"94.**Contributions, etc. ,due to Corporation to have Priority over other debts:-** There shall be deemed to be included among the debts which, under Section.49 of the Presidency-Towns Insolvency Act,1909(3 of 1909), or under Section 61 of the Provincial Insolvency Act,1920(5 of 1920), (or under any law relating to insolvency in force (in the territories which, immediately before the 1st November,1956, were comprised in a part B State,)] [or under Section 530 of the Companies Act,1956 (1 of 1956)], are , in the distribution of the property of the insolvent or in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, the amount due in respect of any contribution or any other amount payable under this Act the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the winding up, as the case may be."

On the basis of this provision it is contended on behalf of the petitioner that the amount due in respect of any contribution or any other amount payable under the provisions of the 1948 Act is a prioritized debt and takes precedence over the debts due to the 1st respondent by the 2nd respondent and therefore the initiation of proceedings under the provisions of the 2002 Act by the 1st respondent against the 2nd respondent is invalid and unenforceable.

In the considered view of this Court this contention is without substance or force. Section.94 of the E.S.I.Act equates

the liability under the provisions of the 1948 Act to and accords it the same priority as a debt under Section.49 of the Presidency-Towns Insolvency Act,1909 or Sec.61 of the Provincial Insolvency Act,1920 or under any law relating to insolvency in force in the territory which immediately before the 1st November,1956 were comprised in a Part-B State or under Section.530 of the Companies Act,1956 i.e., in the matter of distribution of the property on determination of insolvency or in the distribution of the assets on company being wound up.

It is not the case of the 1st respondent either pleaded, asserted or established that the 2nd respondent-Company is a party to insolvency proceedings or is a Company ordered to be wound up under the provisions of the Companies Act,1956. Section.35 of the 2002 Act enjoins that the provisions of this Act shall have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. The right of the 1st respondent to proceed against the properties of the 2nd respondent or against properties mortgaged towards collateral security for the loan obtained by the 2nd respondent from the 1st respondent is therefore a right which is enjoined by the provisions of the 2002 Act and that right to proceed under the provisions of the 2002 Act is protected and immunized by the provisions of Sec.35 of this Act. In the absence of any proceedings under Insolvency Legislation or under the Companies Act,1956 the question of prioritization of the debts/ liabilities of the 2nd respondent due to the petitioner would not arise.

On the aforesaid analysis the petitioner has not made out a case in law to interdict the proceedings against the 1st

respondent under the provisions of the 2002 Act.

There are no merits. The writ petition is accordingly dismissed. However, the petitioner is entitled to pursue its remedies in accordance with law. No order as to costs.

GODA RAGHURAM,J

30th APRIL,2007
***TSNR**